160 U.S. 288

TRANSCRIPT OF RECORD.

160-286

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1894.

No. ~~378~~. 97

THE JERSEY CITY AND BERGEN RAILROAD COMPANY, PLAINTIFF IN ERROR,

vs.

JAMES E. MORGAN.

IN ERROR TO THE SUPREME COURT OF THE STATE OF NEW JERSEY.

FILED MARCH 19, 1892.

(14,997.)

(14,997.)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1894.

No. 378.

THE JERSEY CITY AND BERGEN RAILROAD COMPANY, PLAINTIFF IN ERROR,

vs.

JAMES E. MORGAN.

IN ERROR TO THE SUPREME COURT OF THE STATE OF NEW JERSEY.

INDEX.

	Original.	Print.
Caption	1	1
Writ of error to circuit court of Hudson county	1	1
Return to writ of error	2	1
Complaint	2	2
Pleas	4	3
Replication	5	4
Judgment	6	4
Assignment of errors	7	4
Joinder in error	8	5
Cause taken under advisement	9	5
Judgment	9	6
Clerk's certificate	10	6
Bill of exceptions from Hudson county circuit court	12	7
Evidence for plaintiff	13	7
Testimony of James E. Morgan	13	7
Agnes Morgan	20	13
James E. Morgan (recalled)	23	16
Plaintiff rests	24	17

JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C., APRIL 1, 1895.

	Original.	Print.
Motion for nonsuit and ruling thereon	24	17
Evidence for defendant	24	17
Testimony of John B. Omberson	24	17
Edward Struble	25	18
James C. Johnson	31	23
James Cassidy	35	27
Defendant rests	36	28
Evidence for plaintiff in rebuttal	36	28
Testimony of James E. Morgan	36	28
Agnes Morgan	37	29
Motion for verdict for defendant and ruling thereon	38	29
Charge to jury	39	30
Plaintiff's requests to charge	41	31
Exceptions to charge	42	31
Clerk's certificate to bill of exceptions	43	32
Opinion	45	32
Clerk's certificate to opinion	49	34
Remittitur from court of errors and appeals	51	34
Judgment on remittitur	52	35
Clerk's certificate	52	36
Writ of error	53	36
Citation	56	37
Bond	58	38
Assignment of errors	61	39

1 New Jersey Supreme Court.

JAMES E. MORGAN *ads.* THE JERSEY CITY & BERGEN RAILROAD COMPANY.	In Error. On Affirmance, &c. Thomas J. Kennedy, Attorney.

As yet of the term of February, A. D. eighteen hundred and eighty-nine.

Witness Mercer Beasley, Esquire, chief justice.

BENJ. F. LEE, *Clerk.*

NEW JERSEY, *ss:*

The State of New Jersey sent to the judges of the circuit court of the county of Hudson its writ close in these words, to wit:

NEW JERSEY, *ss:*

The State of New Jersey to Manning M. Knapp, Esquire, judge of our circuit court, at Jersey City, in and for the county of Hudson, or such justice of the supreme court of the State of [L. S.] New Jersey as shall hold such circuit court, Greeting:

Because in the record and proceedings, and also in the giving of judgment in a plaint which was in our circuit court, holden at Jersey City, in and for the said county of Hudson, between James E. Morgan, plaintiff, and The Jersey City and Bergen Railroad Company, defendant, in a plea of trespass on the case, manifest error hath intervened, to the great damage of the said defendant, as by its complaint we are informed, we, being willing that speedy justice shall be done the parties aforesaid in this behalf, do com-
2 mand you, openly and distinctly, to send, under your seal, the record and proceedings aforesaid, with all things touching and concerning the same, to our justices of our supreme court of the State of New Jersey, on the third Tuesday of February instant, together with this writ, that, the record and proceedings aforesaid being inspected, we may further cause to be done thereupon what of right and according to law ought to be done.

Witness Mercer Beasley, Esquire, our chief justice, at Trenton aforesaid, the second day of February, eighteen hundred and eighty-nine.

BENJ. F. LEE, *Clerk.*

VREDENBURGH & GARRETSON, *Attorneys.*

The Answer of Manning M. Knapp, Esquire, Judge of our Circuit Court, at Jersey City, in and for the County of Hudson.

The record and proceedings whereof mention is within named, with all things touching and concerning the same, to the justices of our supreme court, at Trenton, within specified, at the day and

place within contained, I certify in a certain schedule to this writ annexed, as I am commanded.

M. M. KNAPP, *J.* [L. S.]

Hudson County Circuit Court, of the Tenth Day of February, Eighteen Hundred and Eighty-eight.

HUDSON COUNTY, *ss:*

The Jersey City and Bergen Railroad Company, the defendant in this suit, was summoned to answer unto James E. Morgan, the plaintiff therein, of a plea of trespass; and thereupon the said plaintiff, by Thomas J. Kennedy, his attorney, complains:

For that the said defendant, to wit, on the sixth day of January, eighteen hundred and eighty-eight, at Jersey City, in said
3 county, by its agents and servants, with force and arms assaulted the said plaintiff, he being then and there rightfully on and in a certain car and coach, commonly called a street car, of the said defendant and desiring and intending to remain and ride thereon and therein, as he had good right to do, the said defendant being then and there a common carrier of persons, passengers, and the traveling public generally, carrying and conveying persons, passengers, and the general traveling public over and upon the lines of its railroads, and he having then and there paid the fare or hire due to the said defendant for carrying and conveying him in and upon the said car or coach, and the said defendant, by its said agents and servants, then and there with great force and violence seized and laid hold of the said plaintiff and pushed and shoved and violently thrust him from and out of the said car or coach and hindered and prevented him from being and remaining and riding thereon and therein, whereby the said plaintiff was then and there greatly injured, hurt, bruised, and wounded and became and was sick, sore, lame, and disordered, and so remained and continued for a long space of time, to wit, from thence hitherto, during all which time he, the said plaintiff, suffered and underwent great pain and was hindered and prevented from performing and transacting his necessary affairs and business by him during all that time to be performed and transacted, and was forced to lay out and expend a large sum of money, to wit, the sum of one hundred dollars, in and about endeavoring to be cured of the injuries, hurts, bruises, wounds, sickness, soreness, lameness, and disorders aforesaid, occasioned as aforesaid, to wit, at Jersey City aforesaid, in the county aforesaid.

And also for that the said defendant, on the day and year last aforesaid, by its agents and servants, with force and arms again assaulted the said plaintiff, to wit, at Jersey City aforesaid, in the county aforesaid, and then and there again pushed, shoved, beat, bruised, wounded, and ill-treated him, and other wrongs to
4 the said plaintiff then and there did, against the peace of the State and to the damage of the plaintiff of two thousand dollars.

And therefore he brings his suit, &c.

And the said defendant, The Jersey City and Bergen Railroad

Company, by Vredenburgh and Garretson, its attorneys, comes and defends the wrong and injury when, &c., and says it is not guilty of the said supposed trespass above laid to its charge, or any or either of them, in manner and form as the said plaintiff hath above thereof complained against it, the said defendant, and of this it puts itself upon the country, &c.

And for a further plea in this behalf the said defendant, by leave of the court here for this purpose first had and obtained, according to the form of the statute in such case made and provided, says that the said plaintiff ought not to have or maintain his aforesaid action thereof against it, the said defendant, because it says that it, the said defendant, before and at the same time when, &c., was a body corporate of the State of New Jersey, authorized to own a railroad, with cars or coaches to run thereon, from some point on the Kill von Kull at or near Bergen point to the Newark turnpike road leading from Jersey City to Newark, and at the same time when, &c., was lawfully possessed of a car or coach thereon, commonly called a street car, which car or coach at the same time when, &c., was situate and being at Jersey City aforesaid; and the said defendant being so possessed thereof, the said plaintiff, just before the said time when, &c., to wit, on the same day and year in the said declaration mentioned, was in the said car or coach and with force and arms making a great noise and disturbance therein, and at the same time when, &c., stayed and continued therein, making such noise and disturbance without the leave or license and against the will of the said defendant, and during all that time greatly disturbed the said defendant in the quiet possession of said car or coach, and thereupon it, the said defendant, then and there requested the said plaintiff to go and depart out of and from the said car or coach, which the said plaintiff then and there wholly refused to do; whereupon the said defendant, in defense of the possession of its said car or coach, at the same time when, &c., gently laid the hands of its servants upon the said plaintiff in order to remove and did then and there remove the said plaintiff, as it might lawfully do, for the causes aforesaid, and in doing so it necessarily and unavoidably touched the said plaintiff, doing no unnecessary damage to the said plaintiff, on the occasion aforesaid, but this defendant did not nor did its servants assault, nor did it or its servants, with great force and violence or with any force and violence, seize and lay hold of the said plaintiff and push and shove and violently thrust him from and out of the said car or coach, nor did it or its servants push, shove, beat, bruise, wound, or ill-treat the said plaintiff, which are the said supposed trespasses in the declaration mentioned and whereof the said plaintiff hath complained against the said defendant; without this, that it, the said defendant, was guilty of the said supposed grievances or any or either of them elsewhere or in the said car or coach situate as aforesaid; and this it, the said defendant, is ready to verify; wherefore it prays judgment if the said plaintiff ought to have or maintain its aforesaid action thereof against it, the said defendant.

And the said plaintiff, as to the plea of the said defendant by it

first above pleaded, and whereof it hath put itself upon the country, doth the like.

And the said plaintiff, as to the plea by the said defendant by it secondly above pleaded, as to the said several trespasses therein attempted to be justified, saith that the plaintiff, by reason of anything by the said defendant in that plea alleged, ought not to be barred from having and maintaining his aforesaid action thereof against the said defendant, because he says that the said defendant,

6 at the said time when, &c., of its own wrong and without the cause by it in its said second plea alleged, committed the said several trespasses in the said plea attempted to be justified in manner and form as the said plaintiff has above in his said declaration complained against the said defendant; and this the said plaintiff prays may be inquired of by the country, &c.

Therefore to try the issue above joined let a jury come before the said circuit court, at Jersey City aforesaid, on the twelfth day of December, as yet of the term of December, in the year of our Lord one thousand eight hundred and eighty-eight, who neither, &c., by whom, &c., to recognize, &c., because as well, &c., the same day is given to the parties aforesaid, at which day before the said circuit court came the parties aforesaid by their attorneys aforesaid; and the jurors of the jury above mentioned also come, who, to speak the truth of the matters aforesaid, being chosen, tried, and sworn, say upon their oath that the said defendant is guilty of the trespass in the said declaration mentioned, and they assess the damages of the plaintiff on occasion of the premises to three hundred dollars over and above his costs and charges by him about his suit in this behalf expended.

Therefore it is considered that the said plaintiff do recover against the said defendant his damages aforesaid in form aforesaid assessed, and also thirty-three dollars and eighty-nine cents for his costs and charges by the said court now here adjudged to the said plaintiff and with his assent, which damages, costs, and charges in the whole amount to three hundred and thirty-three dollars and eighty-nine cents; and the said defendant in mercy, &c.

Judgment signed Dec. 12, 1888.

M. M. KNAPP, *J.*

Afterwards—that is to say, on the third Tuesday of February, in the year of our Lord one thousand eight hundred and eighty-nine—in the supreme court of the State of New Jersey, comes the said

7 The Jersey City and Bergen Railroad Company, by Vredenburgh & Garretson, its attorneys, and says that in the records and proceedings aforesaid, and also in the matters recited and contained in the said bill of exceptions, and also in the giving of the verdict and judgment aforesaid, there is manifest error, in this, to wit:

First. That the said circuit court, before which, &c., at and upon the aforesaid trial of the said issue so joined between the parties aforesaid, refused and declined to nonsuit the said plaintiff, James

E. Morgan, although thereunto moved by the said defendant, The Jersey City and Bergen Railroad Company, and therein erred.

Second. There was also error in this, to wit, for that the said circuit court, before which, &c., at and upon the aforesaid trial of the said issue so joined between the parties aforesaid, refused and declined to direct the jury to find a verdict for the said defendant, The Jersey City and Bergen Railroad Company, although thereunto moved by it, the said defendant, The Jersey City and Bergen Railroad Company, and therein erred.

Third. There is also error in this, to wit, for that the said circuit court, before which, &c., at and upon the trial of the said issue so joined between the parties aforesaid, charged the jury as follows:

"He tendered this ten-cent piece—a genuine and recognizable coin of the United States—and that was his lawful fare, provided you believe that the coin is in the condition in which it was when issued from the mint, except as it has been changed by proper use. If there has been no other abrasion, no other wearing away, no other defacement of that coin, except such as it has received in passing from hand to hand, then it is still, under the laws of the country, a good ten-cent piece, and was the fare of the plaintiff. If you think it has been otherwise changed—wilfully changed—by being rubbed or in any other way, why, then, it has ceased to be a lawful coin of the country; it has ceased to be lawful tender. This distinc-
s tion rests upon the idea that the Government issues this coin for circulation, and if the Government does not choose to put any limit upon the circulation it shall receive, it continues to be legal tender just as long as it is circulating and receiving only such injury as circulation gives. Every piece of money that passes through our hands is to some extent abraded thereby, and the Government knows and expects that its coin will be abraded, will be worn, and will be in that way defaced, and the Government does not withdraw coin that is only defaced in that way; it is still a legal tender; but if anybody chooses to resort to other means of defacement, then the Government does not any longer sanction that coin; but so long as it is only defaced by lawful use, this coin remains good current coin and lawful tender for all debts. Now, if you believe that is the character of this ten-cent piece, then this plaintiff did lawfully tender his fare—"

Against the exception of the said defendant, The Jersey City and Bergen Railroad Company, and therein erred.

Fourth. There is also error in this, to wit, that the said judgment should have been entered in favor of the said defendant and against the said plaintiff.

Therefore the said The Jersey City and Bergen Railroad Company prays that the judgment aforesaid, by reason of the aforesaid errors and of other errors appearing in the records and proceedings aforesaid, be reversed, annulled, and held for nothing, and that the said Jersey City and Bergen Railroad Company may be restored to all things it has lost on occasion of the said judgment, and that the said James E. Morgan may rejoin to the said error, &c.

And thereupon, afterwards, to wit, on the third Tuesday of February, eighteen hundred and eighty-nine, the said James E. Morgan, by Thomas J. Kennedy, his attorney, comes into court and says that there is no error, either in the record and proceedings aforesaid or in giving the judgment aforesaid, and he prays here that
9 the court here may proceed to examine as well the record and proceedings aforesaid as the matters aforesaid assigned for error, and that the judgment aforesaid, in manner aforesaid given, may in all things be affirmed, &c.

But because the said supreme court now here are not yet advised what judgment to give of and upon the premises a day is given to the parties aforesaid, to wit, until the first Tuesday of November, A. D. eighteen hundred and eighty-nine, to hear the judgment of the said court thereupon.

At which day, before the said court, at Trenton, come the parties aforesaid, by their attorneys aforesaid; whereupon, all and singular the premises being seen and by the court now here fully understood and as well the record and proceedings aforesaid and the judgment given in form aforesaid as the matters aforesaid by the said Jersey City and Bergen Railroad Company above for error assigned being diligently examined and inspected and mature deliberation being thereupon had, it appears to our said court now here that there is no error either in the record and proceedings aforesaid or in giving the judgment aforesaid, and that said writ of error should be dismissed.

Therefore it is considered that the judgment aforesaid in form aforesaid given be in all things affirmed and stand in full force and effect, the said causes and matters above for error assigned in anywise notwithstanding; and it is further considered that the said James E. Morgan do recover against the said Jersey City and Bergen Railroad Company as well his damage as also forty-two dollars and fifty-eight cents for his damages, double costs, and charges which he hath sustained and expended by reason of the delay of execution of the judgment aforesaid on pretense of prosecuting the said writ of error by our said supreme court now here adjudged to the said James E. Morgan and with his assent according to the form
10 of the statute in such case made and provided, and that the said James E. Morgan have execution thereof.

Judgment signed this twelfth day of November, A. D. eighteen hundred and eighty-nine.

M. BEASLEY, *Ch. J.*

I, Benjamin F. Lee, clerk of the supreme court of the State of New Jersey, do certify that the foregoing is a true copy of the judgment in above-stated cause as the same remains of record in my office.

In testimony whereof I have hereto set my hand and the seal of said court, at Trenton, this twenty-
Seal of the Supreme Court. ninth day of February, A. D. eighteen hundred and ninety-two.

BENJ. F. LEE, *Clk.*

11 [Endorsed:] New Jersey supreme court. James E. Morgan *ads.* The Jersey City & Bergen Railroad Company. In error on affirmance. Copy of judgment. Thomas J. Kennedy, attorney.

12 MORGAN
vs.
JERSEY CITY AND BERGEN R. R. Co.

(*Index.*)

Witness.	Direct.	Cross.
James E. Morgan	1, 11, 24	3, 11, 25
Agnes Morgan	8, 25	10
John B. Omberson	12	13
Edward Struble	13	16
James C. Johnson	19	20
James Cassidy	23	23

13 Hudson County Circuit Court, December Term, 1888.

JAMES E. MORGAN
vs.
THE JERSEY CITY AND BERGEN RAILROAD COMPANY.

Mr. Kennedy, for plaintiff.
Messrs. Vredenburgh and Garrittson, for defendant.

Mr. Kennedy asks leave to amend the declaration alleging tender of fare.
No objection being made, permission is granted.

JAMES E. MORGAN sworn for the plaintiff.

Direct examination (by Mr. KENNEDY):

Q. You are the plaintiff in this case?
A. Yes, sir.
Q. Where do you live?
A. Pamrapo, Bayonne city, N. J.
Q. Do you remember the sixth day of January last?
A. Yes, sir.
Q. Where were you on the morning of that day?
A. I was at my sister's, at Jersey City.
Q. Who was with you, if any one?
A. My wife was with me.
Q. Will you please tell the jury what occurred on that day in relation to this matter, in the horse cars, beginning with your starting from Jersey City in the morning?

Objected to.

A. We got on the horse car in the lower part of Jersey City—my wife and I—and after riding a little ways I tendered the conductor a one-dollar bill and he gave me three ten-cent pieces—American

coin—two American quarters, and a Canadian piece. My wife remarked——

Q. That doesn't make any difference. What next occurred?

A. We rode in that car; passed the bridge that crosses the Newark and New York railroad. It is a continuation of Ocean avenue. We got out to visit a lady friend of my wife's—a cousin—and
14 after staying there awhile——

Q. What road was this you got on?

A. The Jersey City and Bergen horse-car railroad. The Greenville and Bayonne continuation runs through Graham street, up from Graham up to Ocean avenue, and continues on to the car stables, and we change cars and go on. After visiting this cousin we took another car and got on, and after riding a little ways the conductor came to me for the fare, and I took out this money and handed him one of the coins, ten cents, a smooth American coin; so he refused to take it and said it wasn't good. He said it was defaced. I told him I had just got it from the conductor on the car about an hour ago; so he said he wouldn't take it; so just then the spotter of the car—the man I supposed to be the spotter—he had got on, and I called his attention to the fact of the coin, and that I got the coin from the railroad company. He looked at it and said, "The conductor has got to turn in good coin;" so he said he wouldn't take it, and then I handed him another piece, a twenty-five-cent piece, and I says, "What's the matter with that?" He says, "I won't take that, either," without hardly looking at it. He said he wanted another coin. I told him I wouldn't give him any other. He could take either one of these coins, and if they wouldn't take it at the stables I would give him another for it. He said he wouldn't do it. I would have to give him another coin or he would put me off. I said I wouldn't give him another, and he said he would put me off, and I took out five cents and paid my wife's fare, and he took me by the shoulder and put me off.

Q. Where was that?

A. That was just below the cemetery, and it was beginning to rain a little, and I walked on and met my wife and met the conductor who gave me this money, and I showed him the money and asked him if he recognized the money and he says, "Yes"——

Objected to.

The COURT: There is no objection to your bringing the conductor to prove that it was the same money.

By the COURT:

Q. You showed him the coin. Which one of the coins was
15 it you showed him that you had tendered to the conductor?

A. The ten-cent piece. He offered to give me the other money for it.

Further direct:

Q. Now, you have frequently ridden on this line, have you?

A. Yes, sir; quite often.

Q. You gave this first conductor a dollar bill and he gave you change?

A. Yes, sir.

Q. Have you ever been refused change on this railroad?

Objected to.

Q. Is it the custom of this railroad to give change?

The COURT: There is no trouble about that. We will assume it to be so.

Q. What was the condition of the weather that day at the time you were put off this car?

A. Just beginning to storm—kind of cold, drizzle, rainy.

By the COURT:

Q. How far from your destination were you put off?

A. About a little over a mile.

Further direct:

Q. From your final destination—that is, where you expected to ride to?

A. Yes; I guess it ain't much over a mile.

By the COURT:

Q. The car stops there at the stable, doesn't it?

A. Yes, sir; and then you have to change cars.

Q. And do you change on the same fare?

A. Yes, sir; one fare carries you right along.

Q. And if you had stayed on that car you would have ridden about a mile?

A. Yes, sir.

Cross-examined (by Mr. GARRITTSON):

Q. What was the coin you first tendered to the conductor?

A. A ten-cent piece.

Q. Where is it?

A. In my pocket.

Q. Have you got it *there?*

A. Yes, sir.

Q. Produce it.

A. (Witness produces same.)

16 Q. That is the one he refused to take?

A. Yes, sir.

Q. What did you give him then?

A. I gave him a twenty-five-cent piece.

Q. Did he take it in his hands?

A. Yes, sir; he took the twenty-five-cent piece in his hand and handed it right back.

Q. I understand he took this money in his hand?

A. Yes, sir.

Q. And what did he do then?

A. He looked at it and said he wouldn't take it and gave it back to me.

Q. Did you take it?

A. Yes, sir; then I called the spotter's attention——

Q. He handed it to you and you took it?

A. Yes, sir.

Q. Then what did you hand him?

A. A twenty-five-cent piece.

Q. Have you that?

A. No, sir.

Q. Why not?

A. I only brought the ten-cent piece.

Q. Why didn't you bring the twenty-five-cent?

A. Well, reason is I couldn't find it.

Q. Why didn't you keep it?

A. I took the twenty-five-cent piece and the ten-cent piece to the United States treasury in New York and they said they were both good pieces.

Objected to. Objection sustained.

Q. Why didn't you bring the quarter?

A. I had the money in my pocket-book and generally carried it with me, but I left it at home at different times, and the coin is mislaid at present.

Q. You mislaid that?

A. Yes, sir.

Q. What kind of a coin is that?

A. A mislaid coin?

Q. Yes.

A. Well, one that perhaps is lost.

By the COURT:

Q. What kind of a piece was it?

A. A twenty-five-cent piece.

Further cross:

Q. Describe it; new or old?

A. It was an old one with a kind of dent in it; it wasn't all the way through.

Q. A hole part way through?

A. I couldn't say it was a hole; it was a bruise, as if it had been shot at with a pistol, or something like that; just a little hole.

Q. That was mutilated to some extent?

A. That is the one; just damaged.

17 Q. Did he take that in his hand?

A. No, sir.

Q. Looked at that?

A. No, sir; he handed it right back without looking at it.

Q. And asked you for something else?

A. Yes, sir.

Q. Well, why didn't you give him something else?

A. I told him if the company wouldn't take that from him at the stables I would give him other money for it.

Q. Why didn't you give him other money then instead of doing that?

A. Well, the other money was a Canadian piece—one of the pieces.

Q. You had two quarters and three ten-cent pieces; altogether four ten-cent pieces; three ten-cent pieces and a Canadian ten-cent piece, I suppose?

A. Yes, sir.

Q. Why didn't you give him one of those?

A. Well, as I had received that from the company I thought if they could pass it I could pass it.

Q. If you found you could not pass it, why did you not give him something else?

A. I didn't know I was before a judge of coin.

Q. Why didn't you give him good money?

A. I did give him good money.

Q. Why didn't you give him money that he would take? You had it there.

A. I didn't know that he would take any of it.

Q. Why didn't you give him other money?

Objected to. Objection overruled.

By the COURT:

Q. What was your reason for not tendering him some other money?

A. Because I thought I had tendered him good money twice, in my opinion, and he had refused it each time.

Further cross:

Q. You wanted to be judge instead of him?

A. I was positive I had examined that quarter and had examined the ten-cent piece and saw there was no hole in either one, especially in the ten-cent piece, and I took the money afterwards to the United States treasury in New York and they said it was good.

Q. Never mind that. I didn't ask you that. You had other money, didn't you?

18 A. Nothing except what I had received from the company, except seven cents, and I paid my wife's fare, five cents, out of the seven.

Q. And you refused to give any other?

A. Yes, sir.

Q. What did you say to him?

A. He said if I did not give him any other money I would have to get off. Well, I told him I wouldn't give him any other money except either the ten-cent piece or the quarter. "Well," he says, "I will put you off."

Q. What did you tell him?

A. I didn't tell him anything.

Q. Didn't you tell him to put you off?
A. No, sir.
Q. Didn't you say that to him?
A. No, sir.
Q. How many times did he ask you for your fare?
A. I couldn't say how many times.
Q. More than once?
A. Yes, sir.
Q. And how did he take hold of you?
A. Put his hand upon my shoulder.
Q. And you got up?
A. Partly with his help.
Q. And partly with your own help?
A. Yes, sir. I didn't want to be injured in my neck, because my neck is kind of ruptured.
Q. You got up then and stepped off?
A. No, sir; he had his hand on me until I got off the car.
Q. You are sure his hand was on you?
A. He made sure of it; he kept his hand one me all the time.
Q. And you stepped off?
A. With his help.
Q. Did he step off?
A. No, sir; he didn't step off.
Q. You stepped off, then?
A. With his help.
Q. What do you mean by his help?
A. He had his hand on my neck until I stepped off the car.
Q. How did he help you with his hand on the back of your neck?
A. Well, do you want me to call it pushed off?
Q. Well, I want to know what you call it.
A. He helped me off with his hand on my shoulder. I crossed over to the walk and walked down to the car stables.
Q. How far were you from the car stables when you got off?
A. I guess about half a mile.
Q. Whereabouts?
A. Just below—between—before you reach the cemetery.
19 Q. And you walked on down to the car stables?
A. Yes, sir.
Q. And found your wife there?
A. Yes, sir.
Q. And got on the next car?
A. Yes, sir.
Q. How soon was that?
A. I don't know how soon after.
Q. Had you missed any car there?
A. I don't know what car went *west* while I was walking down there. I wasn't there to see every car that went.
Q. How long was it after you got there before the next car went?
A. That I don't know.
Q. You don't remember about that?
A. No.

Q. You found your wife waiting when you got there?
A. Yes, sir.
Q. Did you show this coin to anybody at the car stables?
A. Yes, sir.
Q. Mr. Cassidy—this man over there—did you show it to him?
A. I don't know. There was one or two there I showed it to. They were in the employ of the company. I didn't take particular pains to recognize who they were.

Redirect examination:

Q. Now, Mr. Morgan, this twenty-five-cent piece—was it in fact a good coin or was it not?
A. It was a good coin.
Q. Was it worn smooth or were the figures and letters on it still legible?
A. They were so you could distinguish it. Just the only thing about it was the dent.
Q. Was any part of the metal gone by reason of that? Was any of it taken out, punched out, or broken out?
A. No, sir; I guess it was sunk in.
Q. As it was sunk in on one side, was it pressed out the other, so as to make it bent a little?
A. It looked as if it was plugged—it did look kind of that way—but it wasn't. If you looked at the coin you could distinguish that it wasn't right away.
Q. Did it take a very careful inspection to show that?
A. No, sir.
Q. It showed at once on inspection that it was a sound coin?
A. Yes, sir.
20 Q. If you recollect carefully the fact, did you ride from the stable or did you walk? Think a moment.
A. From the stable home, do you mean?
Q. Yes.
A. We rode from the stable home.
Q. Both of you or your wife only?
—. I ain't positive. I was up all night last night and I am a little bit tired.
Q. You spoke about some trouble with your neck. What is it?

Objected to. Objection sustained.

AGNES MORGAN sworn for the plaintiff.

Q. You are the wife of the plaintiff in this case?
A. Yes, sir.
Q. You were with him in Jersey City that morning that has been mentioned?
A. Yes, sir.
Q. You have heard the questions raised here. Will you tell what occurred on the cars that morning?

A. Commencing at the first, we got in one car and my husband tendered a one-dollar bill and he received ninety cents change.

Q. Did you see the change that was given him?

A. Yes, sir; two quarters, three ten-cent pieces, and one Canadian piece, and we rode on until we crossed the railroad bridge—about two blocks—and got off and made a call; then we got on another car of the same line.

Q. What line was it?

A. The Bergen Railroad Company.

Q. In what avenue did you get on this time?

A. Ocean avenue. After riding awhile the conductor came in and my husband handed him a ten-cent piece that he had received from the company about an hour before and he wouldn't take it.

Q. Did he give any reason for not taking it?

A. He said it wasn't good; it was damaged; and my husband explained to him that he had received the coin from the company an hour before and showed him the coin he had received, and while they were arguing the point the spotter, I suppose, came in and my husband called his attention to it, and the spotter said he had to give good money in and he kept the ten-cent piece in his hands and finally gave it back to my husband and told him he would have to have other money. My husband then put a twenty-five-cent piece into his hands, saying, "What is the matter with that?" and
21 the conductor, without looking at it, said, "I won't take that, either." Those are the words he used.

Q. Did he examine it?

A. No, sir; he did not.

Q. Have you seen that coin?

A. Yes, sir.

Q. As a matter of fact, was it a good coin or not?

A. It was a good coin; it looked as though it had been shot at the lower end of the quarter where the date is, but on the other side it was smooth, on the side where the date is, but on the other side it looked as though it had a small hollow.

Q. By "smooth" do you mean it had worn smooth or that it was injured?

A. It looked as though it had been rubbed.

Q. Could the denomination, etc., the amount be seen?

A. The eighteen showed plainly, but the other didn't.

Q. Was there anything else that was at all illegible except the date?

A. That is all.

Q. The denomination of the coin and the eagle, etc., on it, were they to be seen?

A. Yes, sir; they were perfect.

Q. Do you know any explanation of that coin not being here this morning?

A. Well, he has, of course, kept the coin, and I haven't—so, of course, I have seen it several times. Then my husband wanted him to take him on to the stables, and if they wouldn't accept the coin from him—that is, the ten-cent piece—he would pay him good

money; he says, "You shan't loose your money; if they don't accept the coin from you I will give you other money."

Q. And this all occurred how far from the stables, about?

A. Well, we got in about two blocks from the railroad, the New York and Newark railroad, and I presumed the conversation must have lasted, I should think, five minutes.

Q. Well, when the conductor said he wouldn't take that, either, he handed it back, I understand you to say?

A. Yes, sir.

Q. What then occurred?

A. Well, he wanted other money and my husband refused to give him other money; the conductor told him if he didn't he would put him off the car; so my husband then took a five-cent piece out of his pocket and paid my fare; then he took my husband by the shoulder up in this manner (illustrating) and put him off the car.

22 Cross-examined (by Mr. GARRITTSON):

Q. How did your husband take back this ten-cent piece; did the conductor hand it back to him?

A. He had it in his hand this way and said he wouldn't take it, it wasn't good, and put it in his hand.

Q. There was other money there, wasn't there?

A. He had all his money in his hand.

Q. The conductor said he wouldn't take it, and he dropped this ten-cent piece in amongst the other money?

A. I think so.

Q. Where did your husband take the twenty-five-cent piece from?

A. Out of his hand, and handed it to him.

Q. Out of that same hand with the rest of the money in it?

A. I think so.

Q. He picked out that twenty-five-cent piece, which had a mark on it, too, did he?

A. He handed him that quarter.

Q. Do you know any reason why he took that one out?

A. I don't know.

Q. What kind were the others?

A. Quarter, three ten-cent pieces, and a Canadian piece.

Q. The others were all right, weren't they?

A. It was all all right.

Q. There wasn't any question about the others, was there?

A. I don't know whether there would have been or not.

Q. Did you see any trouble about the rest of them?

A. The Canadian ten-cent piece I wouldn't like to have taken myself for ten cents.

Q. Well, among the others?

A. I guess not.

Q. But he took out the one quarter that was marked; that looked as if it had been plugged, didn't it?

A. It looked as though it had been shot at.

Q. Your husband said it looked as if it had been plugged. Is that the way it struck you?

A. I don't know.

Q. How did he take that out; he took it from this money and handed it to the conductor?

A. Put it in his hand.

Q. The conductor held his hand out, did he?

A. I don't know whether he held his hand out for it or whether it was out.

23 Q. It wasn't hanging by his side, was it?

A. He put it in his left hand.

Q. Where was his hand when he put it in?

A. It was in about that position (illustrating).

Q. He put it in his left hand, you say?

A. Yes, sir.

Q. Where was his hand?

A. It must have been up in position to receive it.

Q. You remember accurately which hand—now, about where was his hand?

A. Well, his hand was up in this position; this hand was down; the hand that had the ten-cent piece was handed to him like this, and the hand that the conductor received the quarter with was this hand in this position. (Witness illustrates.)

Q. And he handed it right back, did he?

A. Yes, sir.

Q. Without looking at it?

A. Yes, sir.

Q. Said he wouldn't take it?

A. Wouldn't take that, either.

Q. Where was the spotter at that time?

A. He had gone to the other end of the car.

JAMES E. MORGAN recalled on part of the plaintiff.

Direct examination (by Mr. KENNEDY):

Q. Was it your purpose to bring that quarter here?

Objected to. Objection overruled.

A. It was my intention to bring it here; yes, sir.

Q. Did you show that twenty-five-cent piece, among other persons, to your counsel?

A. Yes, sir.

Q. And what was his request in regard to bringing it here or not?

A. He said bring all the money here.

Q. Then it was accident-ly mislaid or lost?

A. Yes, sir; it might not be lost; it might or might not.

Q. When did you first miss it?

A. Today.

Q. After getting here or before?

A. Before getting here.

Cross-examined (by Mr. GARRITTSON):

Q. When did you see it last?
A. Well, I have seen it within two weeks. I couldn't tell you the exact day, but I have seen it within two weeks.

Plaintiff rests.

24 Defendant's counsel moves for nonsuit on the ground that it appears from the testimony of the plaintiff that he tendered a ten-cent piece, which is present in court, and it is submitted that the refusal to accept it was entirely justifiable, as it is a coin about which there is no such doubt, and the quarter, by the testimony of the plaintiff, also was mutilated in some way; it was not perfect, and the conductor had a right to have a perfect coin, coin that were sufficient legal tender.

By the COURT: No doubt the conductor was entitled to have tender of legal money, but I am quite unable to say that it is not legal money. I am not an expert on such subjects. I presume it is a lawful ten-cent piece; at any rate, there is the evidence of the plaintiff, who says it is a lawful ten-cent piece, and there is the fact that the company had issued it that very morning, which is some evidence against the company that it was a lawful ten-cent piece. I am quite unable to say that the plaintiff did not do all he was required to do in the payment of his fare, both with the ten-cent piece and the twenty-five-cent piece; that is just the question in the case, whether that was lawful money and the conductor was bound to receive it and bound to carry the plaintiff. I decline to nonsuit.

Defendant's counsel prays exception to the refusal to nonsuit and same allowed and signed and sealed accordingly.

JONATHAN DIXON, *Judge*. [L. S.]

JOHN B. OMBERSOM sworn for the defendant.

Direct examination (by GARRITTSON):

Q. You are the assistant cashier of the First National bank?
A. Yes, sir.
Q. I show you this coin. What is your judgment about
25 *is* as cashier?
A. It is a genuine coin, but not negotiable.
Q. What do you mean by that?
A. Mutilated.
Q. Will it pass current?
A. No, sir.
Q. Would it be received at the bank?
A. No, sir.

Cross-examined (by Mr. KENNEDY):

Q. What do you mean by mutilated?
A. Defaced; worn. There is nothing to indicate that it is — genuine piece.

Q. How do you know it is a genuine *peice*, then?
A. Simply by the feeling and the ring.
Q. Then there must be something to indicate it?
A. It is genuine silver.
Q. Genuine coin, I understand you to say?
A. Genuine silver.
Q. And yet there is nothing to indicate it?
A. There is a few marks on it.
Q. A person used to handling coin would know it was a genuine coin?
A. Yes, sir.
Q. A street-car conductor making change or a cashier in the office, where they turn in money, would know it?
A. I don't think they would.
Q. You say it is not negotiable?
A. There is a discount of about fifteen per cent. on it.
Q. On mutilated money?
A. Defaced in any way.
Q. Does not mutilated mean cut away, a piece taken out of it?
A. No, sir; a coin that is defaced in any way, rubbed smooth or any indention on it, is mutilated coin.
Q. Is that true of anything besides coin, that mutilated means defaced in any way?
A. I could not tell you that, sir; that is the decision of the United States Government.
Q. You frequently receive money that is defaced as much as that in your own person?
A. No, sir; I refuse it.
Q. Is this coin defaced in any other way except by wear?
A. No, sir.

EDWARD STRUBLE, sworn for the defendant.

Direct examination (by Mr. GARRITTSON):

Q. Where do you live?
A. 221 Ocean avenue.
Q. What is your business?
A. Car-driver.
26 Q. What were you in January?
A. Conducting.
Q. On the 6th of January last were you conductor of a car?
A. Yes, sir.
Q. On the Jersey City and Bergen railroad?
A. Yes, sir.
Q. On the day that Mr. Morgan and his wife were passengers?
A. Yes, sir.
Q. Do you recollect the instance that has been referred to by them?
A. Yes, sir.
Q. What car were you on? Which way were you going?
A. Towards Greenville.

Q. What time of day?
A. Ten minutes of twelve, about.
Q. That is about the time it occurred?
A. Yes, sir.
Q. Where was the car?
—. On the track.
Q. I mean on what part of the avenue.
A. Ocean avenue, near Fairmount.
Q. Going towards Greenville?
A. Yes, sir.
Q. They got in?
A. Yes, sir; at Claremont avenue.
Q. Who were in the car when they got in?
A. There was nobody, sir.
Q. It was a two-horse car, with a driver and conductor?
A. Yes, sir. There was a passenger on the front platform; no one on the rear platform.
Q. And what transpired when they got in?
A. They rode three blocks, and I walked in to collect the fares. They handed me this piece of coin and I refused it.
Q. Was there any delay about your getting the fare?
A. No, sir.
Q. Did he take it out by itself or with other coins?
A. He pulled the other coin out first and then he searched for this piece of coin.
Q. Let us understand what you mean. Describe how it was.
A. As I walked in the car to get the fare he pulled out two quarters, to my knowledge, and several other small pieces, and he began searching for this piece and handed it to me and I refused it. I told him it was mutilated, which I wouldn't receive. He told me he received it from one of the other conductors. I told him
27 I had nothing to do with that matter; the money had to be good that I turned into the office.
Q. Was that one of the regulations, that you must turn in good money?
A. Well, yes.
Q. Well, you said you wouldn't receive it; what then?
A. He told me he wouldn't give me any other; I would have to take this piece or go without. In the meanwhile Mr. Johnson, the time-keeper, had stepped on the car. I asked Mr. Johnson whether I should take it. He told me he had nothing to do with it; I could suit myself; so I told him he would have to give me another piece of coin or get off the car. He pulled out several pieces of money, but he didn't attempt to hand me another piece.
Q. He says he handed you a quarter.
A. No, sir.
Q. Did you have any other piece of money in your hand other than this ten-cent piece and the five cents he afterward gave you?
A. No, sir.
Q. He didn't hand you any other?
A. No, sir.

Q. How did you return this ten-cent piece to him?
A. Well, he objected to taking it and I dropped it in his hand.
Q. And did he give you any other then?
A. No, sir.
Q. What did he say?
A. He paid me five cents for his lady friend or wife. He told me he would ride all the way to the stables and see the starter about it, and I told him the starter had nothing to do with it whatever. "Well," he says, "I will pay my wife's fare, and put me off."
Q. Then he took out five cents?
A. Yes, sir; paid his wife's fare, and I asked him whether he would pay it or not. He says, "Now, you put me off:" so I put him off.
Q. How?
A. Taking him by the arm, as far as I can recollect.
Q. Was he sitting down?
A. Yes, sir.
Q. All the time this talk was going on?
A. Yes, sir.
Q. You took him by the arm?
A. Yes, sir.
Q. Did he get up?
A. Yes, sir.
Q. And you——
A. I lead him off the car.
Q. Did you get off the car?
A. No, sir.
Q. Did he step off himself?
A. He stepped off himself.
Q. Did you stop the car?
A. I did.
Q. And how far did you go?
A. All the way to the stables.
28 Q. Where was it you put him off?
A. Woodlawn avenue.
Q. That is how far from the stables?
A. Half a mile this side.
Q. And where did his wife go?
A. Right on through.
Q. How far?
A. To the stables.
Q. And did you see him again?
A. No, sir.
Q. Do you do anything with your money at the stables—turn it in in any way?
A. No, sir.
Q. Where are your returns made?
A. Jersey City, at the ferry.
Q. There is nobody there to receive money at the stables?
A. No, sir.
Q. How soon did the next car come along?
A. Ten minutes.

Cross-examined (by Mr. KENNEDY):

Q. You mean on the Jersey City end or the Bayonne end of the line?

A. Jersey City end.

Q. From the stables on down to Bayonne do they run that frequently?

A. They run fifteen minutes on that end—Bergen Point end.

Q. You say there was no one in the car at the time this occurred?

A. No, sir.

Q. There were no passengers in the car?

A. No, sir.

Q. One on the front platform?

A. Yes, sir.

Q. Then you say Mr. Johnson, employee of the road, came on?

A. Yes, sir.

Q. Well, at the time Mr. Morgan was put off the car was there any other passenger in then?

A. No, sir.

Q. You are sure of that?

A. I am positive.

Q. About as sure of that as anything in relation to this?

A. Certain.

Q. Now, I understand you to say that Mr. Morgan searched for this piece?

A. Yes, sir.

Q. Explain what you mean or how he did it.

A. He felt down in his pants pocket and pulled out a lot of coins, and it seems that he was looking for this piece of coin that had been mutilated.

Q. I didn't ask you that—what "seems." Tell what he did. He put his hand in his pocket; what did he do then?

A. He——

29 Q. Did he pull out any other coin with it?

A. Yes, sir.

Q. How many?

A. Well, I couldn't say exactly. I am very sure there was two quarters and two or three ten-cent pieces.

Q. He pulled out two quarters?

A. Yes, sir.

Q. And this ten-cent piece?

A. Yes, sir.

Q. And then he handed you this ten-cent piece?

A. Yes, sir.

Q. How much would the fare of Mr. Morgan and his wife be?

A. Ten cents.

Q. Then he handed you this ten-cent piece?

A. Yes, sir.

Q. And what did you do?

A. I refused it.

Q. Did you take it in your hand?

A. I took it in my hand and looked at it.
Q. And after looking at it you refused to take it?
A. Yes, sir.
Q. Then what did you do with it?
A. I dropped it in his hand.
Q. How was his hand at this time when you dropped it in? Was his hand extended towards you to receive it?
A. No, sir.
Q. How was it, then?
A. In that manner (illustrating).
Q. And you dropped it — the hand in that manner?
A. Yes, sir.
Q. He objected to take it, I under-stood you to say also?
A. Yes, sir.
Q. What did he say? Do you remember?
—. He pulled out this coin and showed it to Mr. Johnson, which he received from another conductor, the change from one dollar.
Q. That is the way he objected?
A. Yes, sir; and I dropped it in his hand.
Q. Who pulled it out and showed it to Mr. Johnson?
A. Mr. Morgan.
Q. But you say he objected to receive it from you.
A. Yes, sir; but in the meanwhile he was showing the rest of the money to Mr. Johnson that he had received from the other conductor, and so I dropped it in his hand.
Q. What, then, did you ask him to do?
A. I told him he would have to pay his fare, give me another piece of coin, or get off the car.
Q. Well, what did he say?
A. He told me he would ride to the stables and see the starter about it. What he meant by that I couldn't exactly say, but I told him the starter had nothing to do with my business whatever, and he would have to pay his fare or get off.
Q. What then did he do?
A. Well, he said, "I will pay my wife's fare and then you put me off."
Q. Didn't he offer you a twenty-five-cent piece?
A. No, sir.
Q. Now, look here, Mr. Struble, try and think, recall all this.
A. No, sir; he offered me no such thing.
Q. Didn't he give you another piece of money?
A. No, sir; he gave me a five-cent piece for his wife.
Q. Didn't he give you any other piece of money?
A. No, sir.
Q. You are sure of that, you swear to that positively?
A. I swear to that positively; yes, sir.
Q. You didn't take any other piece of money from him, either?
A. I took five cents.
Q. Nothing but the ten-cent piece and five-cent piece?
A. That is all.
Q. You didn't receive any other piece of money from him?

A. No, sir.
Q. In any way?
A. No, sir.
Q. Did you tell him then that you would put him off?
A. I would if he wouldn't pay his fare.
Q. And what did he say to that?
A. He paid his wife's fare and told me to put him off.
Q. You had told him you would put him off first?
A. No, sir.
Q. Who first said anything about putting off?
A. He objected to paying his fare and I told him if he didn't pay I would have to put him off.
Q. Was that before he said, "Put me off"?
A. Yes, sir; when I refused the coin he said, "I will pay my wife's fare; you put me off."
Q. But before that you said you would put him off?
A. Yes, sir; if he would not pay his fare.
Q. He didn't say, "Then you will have to put me off, I suppose," or something of that sort; he simply said, "Put me off"?
A. Yes, sir; "Now put me off."
Q. He said that?
A. Yes, sir.
31 Q. Without any qualification?
A. Yes, sir.

JAMES C. JOHNSON sworn for the defendant.

Direct examination (by Mr. GARRITTSON):

Q. Where do you live?
A. 378 Ocean avenue.
Q. What is your business?
A. Time-inspector, Jersey City and Bergen horse-car railroad.
Q. Do you remember this day that has been spoken of by the witnesses in this case?
A. Yes, sir; I got on above Myrtle avenue—I judge about two blocks or three from Claremont avenue, where the conductor said he got on.
Q. Mr. and Mrs. Morgan were in the car when you got on?
A. There was a gentleman and his wife in the car.
Q. Were those the parties?
A. I think so; yes, sir.
Q. Was there anybody else in the car?
A. I think not; I don't remember positive, but I think not; I think there was one or two on the front platform.
Q. How soon after you got on was your attention drawn to these people?
A. Almost as soon as I got on. The coin was handed to me and I was asked whether it was a good coin. I took the coin in my hand, turned it over and looked at it, and said I wouldn't take it. The conductor asked me if he should take it, and I told him to do as he pleased about it.

Q. Was that a matter you had any control over? The conductors are responsible for the money they take?

A. Yes, sir; that is all I said, he should do as he pleased about it.

Q. Where were you at that time?

A. I was standing in the car door—in the rear door.

Q. How did you get hold of the coin?

A. I don't remember positive whether the conductor handed it to me to look at, but I think he did.

Q. And then this talk took place which you have given us?

A. I said I wouldn't take it; it was mutilated; you coulda't either see the cents or date; all you could see was just the crown and head.

Q. What happened then?

A. Well, the conductor says, "Give me one of those other
32 coins, one of those ten-cent pieces; I can't take this," and dropped it in his hand. Morgan put the coins in his pocket.

Q. Did he give the conductor any other coin?

A. No, sir; not while I was in the car.

Q. Did he offer him any other coin?

A. No, sir.

Q. And when he dropped the ten-cent piece in his hand he put the money in his pocket, did he?

A. I think he did.

Q. And then what?

A. Then the conductor told him he must have his fare or he would have to put him off, and he put his hand in his pocket and got out a piece and gave it to the conductor, and he rang it up, and after the conductor asked him again if he was going to pay his fare and he says, "No; you can put me off," and as he said, "You can put me off," he looked right in my face and said, "I will make the company — for it," or "sue." I cannot say which.

Q. And then what did the conductor do?

A. The conductor took him by the arm, between the elbow and shoulder, and put him off.

Q. Were you on the car all the time?

A. I was, sir; on the rear platform.

Q. How far did you go?

A. Well, I went as far as the cemetery, a little beyond the cemetery, and took the next car back and went to dinner.

Q. Where was Morgan put off?

A. Well, I think it was between Woodlawn and Walker avenues. That is about three blocks this side of the cemetery.

Q. Where did he go?

A. He walked up to the sidewalk, I think.

Q. Was it raining?

A. I don't remember whether it was raining. I know it was threatening, but I don't think it was raining at the time, although, perhaps, it may have been; it was a dull day; cloudy.

Cross-examined (by Mr. KENNEDY):

Q. Are you positive that at the time you got on this car there were no other passengers in the car except these two?

A. I don't think there was. I know there was a passenger or two on the front platform.

33 Q. Wasn't there a man sitting on the same side as Mr. and Mrs. Morgan—a man with a long full beard and two fingers missing from one of his hands?

A. That I couldn't say; that I don't remember.

Q. Then you are positive there was nobody in the car?

A. I don't think there was.

Q. But you are not positive?

A. No, sir; not right positive, because it is some time since.

Q. Now, you remained on the rear platform all the time, you say?

A. I think I was on the rear platform until he was put off, and then I walked through the car.

Q. Now, again, are you positive that Mr. Morgan did not offer this conductor another piece of money—a twenty-five-cent piece?

A. Not while I was on the car he didn't.

Q. Were you in such position all the time that you could see whether he gave him money or not?

A. Well, I stood on the rear platform, if I am not mistaken—part of the time I was leaning against the post of the door.

Q. As a fact did you not go immediately after examining this coin—by the way, which coin was it you examined?

A. The ten-cent piece.

Q. Immediately after examining that ten-cent piece did you not go forward and talk with this man with the beard that I spoke about?

A. I don't remember of talking with any——

Q. Did not you say to him that the conductor must turn in good money?

A. No; I don't remember talking to any man until after Mr. Morgan was put off. After Mr. Morgan was put off, if I am not mistaken, a party on the front platform came in the car. I walked through the car after Mr. Morgan was put off, and I remember the remark I made well.

Q. Wasn't there a woman in the car also on the same side with Mrs. Morgan—a woman with glasses?

A. Not that I remember.

Q. And wasn't there a little girl also—you board a great many cars during the day, don't you?

A. I do; yes, sir; and, of course, I don't remember, but as far as I remember there was nobody in the car except Mr. and Mrs. Morgan.

34 Q. Can't you recollect talking to this man that the conductor must receive good money?

A. I don't remember making any remarks until after Mr. Morgan was put off. When he got on the *the* car I don't know, but I

know when I got on the car there were two or three men on the front platform.

Q. What is your position with the company?

A. Time-inspector.

Q. Don't they generally call it spotter?

A. Yes, sir.

Q. What is your duties?

A. It is my business when I get on the car to look at the register. I went in the car and looked at it. I say I went through the car, but I don't think I went through the car until Mr. Morgan was put off. I stood, as I said before, leaning against the left-hand post of the rear door with my shoulder, if I am not mistaken.

Q. And if you did go forward and converse with this man another piece of money might have been handed to the conductor without your knowledge?

A. There was no money handed, because Mr. Morgan was off when I went in the car.

Q. A piece of money might be handed to Mr. Morgan without your knowing it if you went forward to talk with this man?

A. If I remember, I was not inside the car until Mr. Morgan was put off, except leaning against the door and talking with him about this coin; he said something about waiting until we got to the stables and see what the starter said. I saw all the coins; he pulled them out and showed them to me and said a conductor on the road had given him them coins; I don't remember exactly the coins; there was two or three quarters and some other money.

Q. When Mr. Morgan was put off did the conductor and Mr. Morgan rush pass you; do you remember their passing you?

A. I do; I stepped one side.

Q. In regard to what Mr. Morgan said—"Put me off," were the words you used, I think—when was that?

A. It was after he paid his wife's fare.

Q. What did you take that to mean, that he was ready to be put off simply now if he had to be put off?

A. Well, I took it in this way: "Put me off and I will make the company pay for it."

35 Q. Did he say that to you?

A. He looked up to me, and that is the words he remarked. The conductor asked him for his fare after he had paid his wife's fare, and he said, "No; put me off." I don't know whether he said, "You can put me off," or just "put me off."

Q. Do you remember talking with this man I mentioned after Mr. Morgan was put off?

A. I was talking with some man; yes. I can't really remember what we were talking about, but I said if the company allowed the conductors to receive mutilated coins we would have more in a week than four horses could cart off.

Q. Where was this man?

A. He was inside the car, but just where I don't know.

Q. Oh, then, you remember there was somebody inside the car?

A. I said before he must have come in the front door, as I don't remember anybody being inside the car.

JAMES CASSIDY sworn for the defendant.

Direct examination (by Mr. GARRITTSON):

Q. Where do you live?
A. Bayonne.
Q. Do you remember the day of this occurrence?
A. I do.
Q. Where were you?
A. I was in the room eating my dinner at the time, in the conductors' and drivers' room at the Greenville stable.
Q. What was it you knew about it?
A. This man came in and said that he had this bad ten-cent piece. I don't know which it was. He said he was glad he was put off because he wanted to be put off, and then he showed the ten-cent piece. He either said he was glad to be put off or he wanted to be put off.
Q. What kind of a ten-cent piece was it?
A. It was a ten-cent piece I wouldn't take.
Q. Are you a conductor on this road?
A. Yes, sir.

Cross-examined (by Mr. KENNEDY):

Q. Did not Mr. Morgan come in that office to find the name of the conductor?
A. I was in the back part of it at the time he came, eating my dinner, and he came in there about the ten-cent piece,
36 and said the conductor put him off. I think, to the best of my recollection, he did come in and ask the conductor's name, and Eddie Strubble said, "My name is Edward Strubble."
Q. Didn't Strubble refuse to give his name and say if he wanted to find out he would have to go to the office? Think now, Mr. Cassidy.
A. Not as I remember. I know he gave his name as Strubble right there.
Q. What was this about being put off?
A. He said either he was very glad or wanted to be put off; he would go down and report Strubble.
Q. Either glad or wanted to be put off?
A. I don't know which was the words he used; it was something like that. I didn't pay much attention to it. I was eating my dinner and he came right in the room and let out speaking that way.
Q. I understood the conductor to deny seeing—he said he didn't see Mr. Morgan after he got to the car stables at all; then he didn't tell the truth, eh?
A. The conductor was in there.
Q. Well, he did see him?

A. Conductor Strubble was there in the office, because we were both eating; we both always ate dinner together there at the time when he was conductor.

Plaintiff's counsel moves that the evidence of this witness be striken from the record.

By the COURT: No; I won't strike it out; let it stand; it is not of any consequence.

Defendant rests.

JAMES E. MORGAN recalled on behalf of the plaintiff in rebuttal.

Direct examination (by Mr. KENNEDY):

Q. Who were present in this car at the time that this discussion about the fare took place?

Objected to.

A. Two or three persons in the car at the time.

Q. Who were they?

A. I don't know them by name; two female passengers and one male passenger beside us in the car.

Q. Did you see Mr. Johnson come in?

A. Yes, sir.

37 Q. And after the discussion about the ten-cent piece?

A. Mr. Johnson walked to the front door of the car and stayed up there. He was up there until after I was put off the car; never came back.

Q. What was he doing up there?

A. Well, I don't know.

Q. How did he stand with regard to you—facing you or otherwise?

A. I think he was about sideways; whether he was talking to any one or not—I didn't pay any attention to who he was talking to then, because just a little while before I had him look at the ten-cent piece.

Q. Where was he at the time you offered this twenty-five-cent piece?

A. In the fore part of the car—up in front.

Q. Was there any loud talking about this matter in the car?

A. Yes, sir; the talking was loud enough to be heard in any part of the car. I was talking about as loud as I am now.

Cross-examined (by Mr. GARRITTSON):

Q. Mr. Johnson looked at this ten-cent piece?

A. Yes, sir.

Q. And it was handed back to you?

A. Yes, sir.

Q. And then you put it in your pocket, didn't you?

A. No, sir; I never put the money out of my hand until I was off the car.

AGNES MORGAN recalled for the plaintiff in rebuttal.

Direct examination (by Mr. KENNEDY):

Q. Where was Mr. Johnson at the time the conversation in regard to the twenty-five-cent piece occurred?

A. At the front of the car; he walked up, but I don't know what he was doing.

Q. Did he remain there?

A. Yes, sir.

Q. Where was he when Mr. Morgan was put off the car?

A. At the front of the car; he remained there; and after my husband was put off the car he was talking with a man—a gentleman who had a long beard and two fingers off the left hand.

Q. Who else was in the car?

A. A young lady who wore glasses and a child about fourteen years old.

Q. Did you know any of these parties by name or where they lived?

A. No, sir. The gentleman got out at the stables; also the child, and the young lady got out at Danforth avenue.

Case closed.

38 Hudson Co. Circuit Court, December Term, 1888.

JAMES E. MORGAN
vs.
JERSEY CITY AND BERGEN R. R. Co.

Defendant's counsel asks the court to direct the jury to bring in a verdict for the defendant on the ground that the coin was not a current coin, one that is not mutilated, a perfect coin, one that is worth its face value.

The COURT: It is not mutilated in the ordinary sense. Mutilation implies the taking away of some part. It is not mutilated in the ordinary sense of the term; a portion of it is gone only by use, by currency, and that happens to any coin after it has passed through numerous hands. How soon after use, such use as the Government intends—how soon does the coin cease to be coin? I have looked into the statutes and am unable to find any limitation upon the legal-tender character of silver coin; there is an express limitation on the gold coin, and that is when its circulation has resulted in the loss of one-half of one per cent. of its standard weight for 20 years of circulation. But that limitation does not extend to silver coin, and the provision of the statutes is that silver coin shall be lawful tender so long as it remains lawful money of the country.

A reason for this distinction may be that the metal of the gold coin is worth its nominal value when issued, and therefore the Government limits the loss of which it will sustain by the wear-
39 ing of the coin, while the metal of silver coin is worth so much less than its nominal value that by circulation it can-

not be depreciated enough to offset the profit made by the Government in issuing it; at least so long as it remains recognizable. At any rate the statutes make the distinction.

This company is a common carrier, bound to carry passengers on tender of lawful fare. I am a little uncertain about what rule I will ask the jury to apply to it, but I will decline to direct a verdict.

Defendant's counsel prays that an exception may be allowed to the refusal of the court to direct a verdict for the defendant, and the same is allowed and signed and sealed accordingly.

JONATHAN DIXON, *Judge*. [L. S.]

The COURT: Gentlemen of the jury, the first question to decide is whether the plaintiff tendered his lawful fare. He tendered this ten-cent piece, a genuine and recognizable coin of the United States, and that was his lawful fare, provided you believe that the coin is in the condition in which it was when issued from the mint, except as it has been changed by proper use. If there has been no other abrasion, no other wearing away, no other defacement of that coin except such as it has received in passing from hand to hand, then it is still, under the laws of the country, a good ten-cent piece and was the fare of the plaintiff. If you think it has been otherwise changed, wilfully changed, by being rubbed or in any other way, why then it has ceased to be a lawful coin of the country; it has ceased to be lawful tender. This distinction rests upon the idea that the Government issues this coin for circulation, and if the Government does not choose to put any limit upon the circulation it shall receive it continues to be legal tender just as long as it is circulating and receiving only such injury as circulation gives. Every piece of money that passes through our hands is to some extent abraded thereby, and the Government knows and expects that its coin will be abraded, will be worn, and will be in that way defaced, and the Government does not withdraw coin that is only defaced in that way; it is still a legal tender. But if anybody chooses to resort to any other means of defacement, then the Government does not any longer sanction that coin. But so long as it is only defaced by lawful use this coin remains good current coin and lawful tender for all debts.

Now, if you believe that is the character of this ten-cent piece, then this plaintiff lawfully tendered his fare. If you do not believe it is of that sort, then the plaintiff did not lawfully tender his fare.

The twenty-five cents he afterwards tendered, he says, was defaced otherwise than by circulation; it has been indented by force, and that was a condition of things the Government did not contemplate when it issued that 25-ct. piece—did not sanction—and just as soon as a man comes in possession of a coin of that kind, why, he has that which the Government no longer endorses as legal tender. So, according to the plaintiff's own statement, the tender of the 25-ct. piece was not a good tender of his fare.

The question will turn, then, on what you believe as to the character of this particular coin which is before you. Now, if he had

not lawfully tendered his fare, then the conductor was justified in putting him from the car, because when a man gets on a car of that kind it is on condition that upon proper demand he will tender his fare; he was properly removed and was removed without any undue violence, and your verdict should be for the defendant. If, however, you think he had tendered his fare by this coin, then his removal was improper, and he is entitled to compensation for the trouble to which he was put and the indignity that was put upon him by the act of the conductor.

41 He was turned off the car as a man not willing to perform his ordinary obligations and was compelled to walk half a mile.

Now, that is the injury he sustained and you are to award him what you think will fairly compensate him for that. Now, it was said by counsel you should put yourselves in his place—think how you would feel about it if it were your case. Well, now, you should not do that. You see, if you were to do that, then the plaintiff would be the man we ought to ask as to the amount of his compensation. You are selected, not as men who have felt the indignity, not as men who are interested in the case, but you are here as men that are not interested either with plaintiff or defendant, but stand perfectly impartial between the two and are exercising a judgment that is stirred by no indignation, a reasonable judgment. You are to say what would be a fair compensation to the plaintiff for the trouble and indignity that he received.

Plaintiff's counsel asks the court to charge the jury that if the 25-ct. piece offered to the conductor was simply indented and no part of it removed, whatever caused that indentation, the coin then would not be called or classed as mu-lated coin—simply indented.

The COURT: It would not be mutilated, but it would no longer be such a coin as the United States has issued and intended to be circulated. I decline to charge except as already charged.

Exception taken.

DEFENDANT'S COUNSEL: I call your honor's attention to the claim for damages made by counsel for plaintiff; that he should be allowed for the amount he is obliged to spend in bringing his suit.

The COURT: The law provides for the costs of litigation and they are not to be included in your verdict; do not consider them.

42 Plaintiff's counsel also asks the court to charge that the jury should bring in exemplary damages.

The court refuses to so charge and exception is taken.

Defendant's counsel prays exception to that part of the charge wherein the court charges as follows:

"He tendered this ten-cent piece, a genuine and recognizable coin of the United States, and that was his lawful fare, provided you believe that the coin is in the condition in which it was when issued from the mint, except as it has been changed by proper use. If there has been no other abrasion, no other wearing away, no other defacement of that coin such as it has received in passing from hand to hand, then it is still under the laws of the country a good ten-

cent piece and was the fare of the plaintiff. If you think it has been otherwise changed, willfully changed by being rubbed, or in any other way, why then it has ceased to be a lawful coin of the country; it has ceased to be lawful tender. This distinction rests upon the idea that the Government issues this coin for circulation, and, if the Government does not choose to put any limit upon the circulation it shall receive, it continues to be legal tender just as long as it is circulating and receiving only such injury as circulation gives. Every piece of money that passes through our hands is to some extent abraded thereby, and the Government knows and expects that its coin will be abraded, will be worn, and will be in that way defaced, and the Government does not withdraw coin that is only defaced in that way; it is still a legal tender; but if anybody chooses to resort to any other means of defacement, then the Government does not any longer sanction that coin: but so long as it is only defaced by lawful use this coin remains good current coin and lawful tender for all debts.

Now, if you believe that is the character of this ten-cent piece, then this plaintiff did lawfully tender his fare," and same is allowed and signed and sealed accordingly.

JONATHAN DIXON, *Judge*. [L. S.]

43 I, Benjamin F. Lee, clerk of the supreme court of the State of New Jersey, do hereby certify that the foregoing is a true copy of the bill of exceptions filed in above-stated cause as the same remains on file in my office.

Seal of the Supreme Court.

In testimony whereof I have hereto set my hand and the seal of said court, at Trenton, this seventeenth day of March, A. D. eighteen hundred and ninety-two.

BENJ. F. LEE, *Clerk*.

44 [Endorsed:] New Jersey supreme court. The Jersey City and Bergen R. R. Co., pl'tiff in error, *vs.* James E. Morgan, def't in error. In error to Hudson C. C. Bill of exceptions. Vredenburgh & Garretson, attorneys, No. 1 Exchange place, Jersey City, N. J. Filed Feb'y 26, 1889.

45 New Jersey Supreme Court.

JERSEY CITY AND BERGEN RAILROAD COMPANY, Plaintiff in Error,
vs.
JAMES E. MORGAN, Defendant in Error.

A genuine silver coin, worn smooth by use, not appreciably diminished in weight, and distinguishable, is a legal tender for car fare, and if ejected for refusal to make other payment the passenger may have an action for damages.

On error to Hudson circuit court.

Argued at June term, 1889, before Beasley, chief justice, and Justices Depue, Van Syckle, and Scudder.

For the plaintiff in error, Vredenburgh & Garretson.

For the defendant, Thomas J. Kennedy.

The opinion of the court was delivered by SCUDDER, *J.*:

The defendant company was running a horse-car railroad in certain streets of Jersey City. The plaintiff below and his wife entered one of their cars, and after riding a short distance he handed to the conductor, in his own language, "one of the coins, ten cents, a smooth American coin." The amount was right for two fares, but the conductor refused to receive the coin because it was worn smooth. The plaintiff protested, paid his wife's fare, five cents, with another small coin, and, on refusal to pay for himself with
46 any other money than the dime he had offered, was ejected from the car. This action was brought to recover damages for the alleged unlawful ejection and a recovery had by the verdict of a jury. On the writ of error in this court the single question presented is whether the judge in his charge to the jury gave the proper direction. He said that the plaintiff "tendered this ten-cent piece, a genuine and recognizable coin of the United States, and that was his lawful fare, provided that you believe that the coin is in the condition in which it was when issued from the mint except as it has been changed by proper use. If there has been no other abrasion, no other wearing away, no other defacement of that coin except such as it has received in the passing from hand to hand, then it is still under the laws of the country a good ten-cent piece and was the fare of the plaintiff. If you think it has been otherwise changed—willfully changed, &c.—it has ceased to be a lawful coin of the country, and it has ceased to be lawful tender."

This instruction, we think, was substantially correct. By the act of March 3d, 1875 (Rev. Stat. U. S., S. 3586), "the silver coins of the United States shall be a legal tender at their nominal value for any amount not exceeding five dollars in any one payment."

By the act of January 9th, 1879 (Sup. Rev. Stat. U. S., 488), the holder of any of the silver coins of the United States of smaller denomination than $1 may, on presentation of the same in sums of $20 or any multiple thereof at the office of the Treasurer of the United States, receive therefor lawful money of the United States.
47 Section 3 increases the legal tender of silver coin to the sum of $10 instead of $5 under the previous statute.

In section 3585 of the Revised Statutes the gold coins of the United States are made a legal tender in all payments at their nominal value when not below the standard weight and limit of tolerance for the single piece, and, when reduced in weight below such standard and tolerance, shall be a legal tender at valuation in proportion to their actual weight. The limit of tolerance for gold coin referred to is found in sections 3505 and 3511 to be, when reduced in weight by natural abrasion, not more than one-half of one per centum below the standard weight prescribed by law after

a circulation of twenty years, as shown by the date of coinage, and at a ratable proportion for any period less than twenty years. This particularity in the limitation and allowance as to gold coin is not found in the case of natural abrasion in silver coins. This difference is very noticeable and important in a question of statutory construction and legislative intention. It seems by these statutes that so long as a genuine coin is worn only by natural abrasion, is not appreciably diminished in weight, and retains the appearance of a coin duly issued from the mint, it is a legal tender for its its original value. United States *v.* Lissner, 12 Fed. Rep., 840.

The coin in question in this case was shown in court to the jury. It does not appear in the evidence to have been so worn that it was light in weight or not distinguishable as a genuine dime.

48 With no limitation put upon its circulation by the Government it would seem that none was intended so long as it was not defaced, cut, or mutilated, and was only made smooth by constant and long-continued handling while being circulated as part of the national currency.

The instruction was right as the facts appear and as the jury found them, and the judgment will therefore be affirmed.

49 I, Benjamin F. Lee, clerk of the supreme court of the State of New Jersey, do certify that the foregoing is a true copy of the opinion in above-stated cause as the same remain on file in my office.

Seal of the Supreme Court.

In testimony whereof I have hereto set my hand and the seal of said court, at Trenton, this seventeenth day of March, A. D. eighteen hundred and ninety-two.

BENJ. F. LEE.

50 [Endorsed:] New Jersey supreme court. Jersey City and Bergen Railroad Company, plaintiff in error, *vs.* James E. Morgan, defendant in error. Opinion, Scudder, J.

51 New Jersey Court of Errors and Appeals, November Term, 1890.

Between—

THE JERSEY CITY AND BERGEN RAILROAD COMPANY, Plaintiffs in Error,
vs.
JAMES E. MORGAN, Defendant in Error.

In Error to the Supreme Court. Order on Affirmance of Judgment.

This cause having been duly argued at the March term, 1890, of this court by Vredenburgh & Garretson, of counsel for the plaintiff in error, and Thomas J. Kennedy, of counsel for the defendant in error, and the court having considered the same and finding no error in the record or proceedings in the supreme court—

It is thereupon ordered and adjudged that the judgment of the supreme court removed by the writ of error in this cause be affirmed

with double costs, to be taxed, and that the record be remitted to the supreme court to be proceeded with in accordance with this judgment and the practice of said court.

On motion of—

THOMAS J. KENNEDY,
Attorney of Defendant in Error.

November 18, 1890.

DEPARTMENT OF STATE.

I, Henry C. Kelsey, secretary of state of the State of New Jersey and *ex officio* clerk of the court of errors and appeals in the last resort in all causes, do hereby certify that the foregoing is a true copy of an order made by said court in the above-stated cause, dated November 18, 1890, as the same is taken from and compared with the minutes of said court.

52 In testimony whereof I have hereunto set my hand and affixed my official seal, at Trenton, this nineteenth day of
[L. S.] November, A. D. 1890.

HENRY C. KELSEY,
Secretary of State.

New Jersey Supreme Court, November Term, 1890.

THE JERSEY CITY AND BERGEN RAILROAD COMPANY
vs.
JAMES E. MORGAN.
} In Error. Remittitur.

It appearing by the remittitur now here returned from the court of errors and appeals that the judgment of this court was in and by said court of errors and appeals affirmed, with double costs, it is ordered that said remittitur be filed, and that said cause be proceeded with according to law.

Entered November 20, 1890.

On motion of—

THOMAS J. KENNEDY, *Att'y.*

I, Benjamin F. Lee, clerk of the supreme court of the State of New Jersey, do hereby certify that the foregoing are true copies of the remittitur from the court of errors and appeals in the above-stated cause and of the rule entered in the minutes of supreme court upon the filing of said remittitur.

In testimony whereof I have hereto set my hand and the seal of said court, at Trenton, this seventeenth day of
Seal of the Supreme Court. March, A. D. eighteen hundred and ninety-two.

BENJ. F. LEE, *Clk.*

53 UNITED STATES OF AMERICA, *ss.*:

[The Seal of the U. S. Circuit Court, Dist. of New Jersey.]

The President of the United States of America to the honorable the justices of the supreme court of judicature of the State of New Jersey, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said supreme court, before you, between The Jersey City and Bergen Railroad Company, plaintiff in error, and James E. Morgan, defendant, before you or some of you on a writ of error to the circuit court of the county of Hudson, which judgment rendered by you was affirmed on writ of error by the court of errors and appeals of the State of New Jersey, being the highest court of law or equity of the said State in which a decision could be had in said suit, the said record and proceedings having been duly remitted by said court of errors and appeals to you and being now before your said supreme court, and said suit being a suit wherein was drawn in question the validity of a treaty or statute of or an authority exercised under the United States and the decision was against their validity, or wherein was drawn in question the validity of a statute of or an authority exercised under said State, on the ground of their being repugnant to the Constitution, treaties, or laws of the United States, and the decision was in favor of such their validity, or wherein was drawn in question the construction of a clause of the
54 Constitution or of a treaty or statute of or commission held under the United States and the decision was against the title, right, privilege, or exemption specially set up or claimed under such clause of the said Constitution, treaty, statute, or commission, a manifest error hath happened, to the great damage of the said The Jersey City and Bergen Railroad Company, as by its complaint appears, we, being willing that error, if any hath been, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington within 30 days from the date hereof, in the said Supreme Court to be then and there held, that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the laws and customs of the United States should be done.

Witness the Honorable Melville W. Fuller, Chief Justice of the

said Supreme Court, the eighteenth day of February, in the year of our Lord one thousand eight hundred and ninety-two (1892).

S. D. OLIPHANT,
Clerk of the Circuit Court of the United States for the District of New Jersey.

Allowed by—

SAM'L BLATCHFORD,
Associate Justice of the Supreme Court of the United States.

February 18th, 1892.

55 [Endorsed:] Supreme Court of the United States. The Jersey City and Bergen R. R. Co., pl'tff in error, *vs.* James E. Morgan, def't in error. In error to supreme court of New Jersey. James B. Vredenburgh, att'y.

The Answer of the Justices of the Supreme Court of New Jersey, within Named.

The record and proceedings whereof mention is within made, with all things touching and concerning the same, we do certify to the court of errors and appeals in a certain schedule to this writ annexed, as within we are commanded.

M. BEASLEY, *C. J.*

56 UNITED STATES OF AMERICA, *ss:*

The President of the United States to James E. Morgan, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington, within 30 days from the date hereof, pursuant to a writ of error filed in the clerk's office of the supreme court of the State of New Jersey, wherein The Jersey City and Bergen Railroad Company is plaintiff in error and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error, as in the said writ of error mentioned, should not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States, this eighteenth day of February, in the year of our Lord one thousand eight hundred and ninety-two.

SAM'L BLATCHFORD,
Associate Justice of the Supreme Court of the United States.

57 [Endorsed:] Service of the within citation is hereby acknowledged this 20th day of February, A. D. 1892. Thomas J. Kennedy, att'y for def't in error, James E. Morgan. Filed Feb. 26, 1892. Benj. F. Lee, cl'k.

58 Know all men by these presents that we, The Jersey City and Bergen Railroad Company, as principal, and Charles B. Thurston and Edward F. C. Young, of Jersey City, Hudson county, New Jersey, as sureties, are held and firmly bound unto James E. Morgan in the full and just sum of one thousand dollars, to be paid to the said James E. Morgan, his certain attorney, executors, administrators, or assigns; to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents.

Sealed with our seals and dated this fifteenth day of February, in the year of our Lord one thousand eight hundred and ninety-two.

Whereas lately, at a term of the supreme court of the State of New Jersey, in a suit depending in said court between The Jersey City and Bergen Railroad Company, plaintiff in error, against said James E. Morgan, defendant in error, a judgment was rendered against said company on a remittitur from the court of errors and appeals of the State of New Jersey, being the highest appellate court of said State, and in which court of errors and appeals a judgment was rendered against the said The Jersey City and Bergen Railroad Company, and the record having been remitted to said supreme court and being now in said supreme court, and the said The Jersey City and Bergen Railroad Company having obtained a writ of error and filed a copy thereof in the clerk's office of the said supreme court to reverse the judgment in the aforesaid suit, and a citation directed to the said James E. Morgan, citing and admonishing him to be and appear at a Supreme Court of the United States to be holden at Washington within 30 days from the date thereof:

Now, the condition of the above obligation is such that if the said The Jersey City and Bergen Railroad Company shall prosecute their said writ of error to effect and answer all damages and costs if they fail to make their plea good, then the above obligation to be void; else to remain in full force and virtue.

JERSEY CITY & BERGEN RAILROAD COMPANY.
C. B. THURSTON, *President.* [SEAL.]
C. B. THURSTON. [SEAL.]
E. F. C. YOUNG. [SEAL.]

Sealed and delivered in presence of—words "James E." & "on the second Monday of October next" crossed out and word "Supreme" interlined before execution—

GEO. W. CASSEDY.

Approved by—

59 [Endorsed:] N. J. supreme court. The Jersey City & Bergen R. R. Co. *v.* James E. Morgan. Bond & citation. Vredenburgh & Garretson, att'ys. Filed Feb. 26, 1892. Benj. F. Lee, cl'k.

UNITED STATES OF AMERICA, } ss:
District of New Jersey, }

Charles B. Thurston and Edward F. C. Young, the sureties within named, being each for himself duly sworn, on his oath deposeth and saith that he is a resident of Jersey City, Hudson county, New Jersey, and is worth in real estate in said city at least the sum of two thousand dollars over and above all his just debts and incumbrances on his real estate.

C. B. THURSTON.
E. F. C. YOUNG.

Sworn and subscribed before me this 15th day of February, A. D. 1892, at Jersey City, New Jersey.

{ Seal George W. Cassedy, U. S. Commissioner, }
{ District of New Jersey. }

GEO. W. CASSEDY,
U. S. Commissioner.

The foregoing bond is approved as to form and amount and the sufficiency of sureties.

SAML BLATCHFORD,
Associate Justice of the Supreme Court of the United States.

February 18th, 1892

60 Supreme Court of the United States, of the Nineteenth Day of March, in the Year of Our Lord One Thousand Eight Hundred and Ninety-two.

THE JERSEY CITY AND BERGEN Railroad Company, Pl'tiff in Error, *vs.* JAMES E. MORGAN, Def'd't in Error.	In Error to the Court of Errors and Appeals of New Jersey. On Writ of Error to N. J. Supreme C't. Assignment of Errors.

Afterwards, to wit, on the 19th day of March, in the year of our Lord eighteen hundred and ninety-two, before the justices of the Supreme Court of the United States, at Washington, comes the said The Jersey City and Bergen Railroad Company, by James B. Vredenburgh, it attorney, and says that in the record and proceedings aforesaid and also in the matters recited and contained in the said bill of exceptions and also in the giving of the verdict and judgment of the court of errors and appeals of New Jersey on the writ of error aforesaid there is manifest error in this, to wit:

First. That the said judge of the circuit court before which, &c., at and upon the aforesaid trial of the said issue so joined between the parties aforesaid, refused and declined to nonsuit the said James E. Morgan, the plaintiff in said court, although thereunto moved by the defendant in said court, the said The Jersey City and Bergen Railroad Company, and therein erred.

61 Second. There is also error in this, to wit: For that the said judge of the said circuit court before which, &c., at and upon the aforesaid trial of the said issue so joined between the parties aforesaid, refused and declined to direct the jury to find a verdict for the said defendant, The Jersey City and Bergen Railroad Company, although thereunto moved by it, the said defendant, The Jersey City and Bergen Railroad Company, and therein erred.

Third. There is also error in this, to wit: For that the said judge of the circuit court before which, &c., at and upon the trial of the said issue so joined between the parties aforesaid, charged the jury as follows:

"He tendered this ten-cent piece—a genuine and recognizable coin of the United States—and that was his lawful fare, provided you believe that the coin is in the condition in which it was when issued from the mint, except as it has been changed by proper use. If there has been no other abrasion, no other wearing away, no other defacement of that coin except such as it has received in passing from hand to hand, then it is still, under the laws of the country, a good ten-cent piece and was the fare of the plaintiff. If you think it has been otherwise changed, willfully changed, by being ribbed or in any other way, why then it has ceased to be a lawful coin of the country; it has ceased to be lawful tender. This distinction rests upon the idea that — Government issues this coin for circulation, and if the Government does not choose to put any limit upon the circulation it shall receive it continues to be legal tender just as long as it is circulating and receiving only such injury as circulation gives.

62 Every piece of money that passes through our hands is to some extent abraded thereby, and the Government knows and expects that its coins will be abraded—will be worn—and will be in that way defaced, and the Government does not withdraw coin that is only defaced in that way; it is still a legal tender; but if anybody chooses to resort to any other means of defacement, then the Government does not any longer sanction that coin; but so long as it is only defaced by lawful use this coin remains good, current coin and lawful tender for all debts. Now, if you believe that is the character of this ten-cent piece, then this plaintiff did lawfully tender his fare," against the exception of the said defendant, The Jersey City and Bergen Railroad Company, and therein erred.

Fourth. There is also error in this, to wit, that the said judgment of the said circuit court should have been entered in favor of the said defendant, The Jersey City and Bergen Railroad Company, and against the said plaintiff, James E. Morgan.

Fifth. There is also manifest error in this, to wit, that by the record aforesaid it appears that the said supreme court affirmed the judgment of the said circuit court of the county of Hudson and gave judgment for the said James E. Morgan, plaintiff below, against the said The Jersey City and Bergen Railroad Company, defendant below, whereas by the law of the land the said judgment of the said court below, the said circuit court of the county of Hudson, should have been reversed, set aside, annulled, and for nothing holden and judg-

ment should have been entered for the said The Jersey City
63 and Bergen Railroad Company against the said James E. Morgan.

Sixth. There is also manifest error in this, to wit, that by the record aforesaid it appears that the said court of errors and appeals affirmed the judgment of the said supreme court and gave judgment for the said James E. Morgan, defendant in error below, against the said The Jersey City and Bergen Railroad Company, plaintiff in error below, whereas by the law of the land the said judgment of the said court below, the said supreme court, should have been reversed, set aside, annulled, and for nothing holden and judgment should have been entered for said The Jersey City and Bergen Railroad Company against the said James E. Morgan.

Therefore the said The Jersey City and Bergen Railroad Company prays that the judgment aforesaid, by reason of the errors aforesaid and of other errors appearing in the record and proceedings aforesaid, may be reversed, annulled, and held for nothing, and that the said The Jersey City and Bergen Railroad Company may be restored to all things it hath lost on occasion of the said judgment, &c.

JAMES B. VREDENBURGH,
Attorney for and of Counsel with Plaintiff in Error.

63½ [Endorsed:] U. S. Supreme Court. The J. C. & Bergen R. R. Co., pl'ff in error, *vs.* James E. Morgan, def't in error. Assignment of errors. Vredenburgh & Garretson, attorneys, No. 1 Exchange place, Jersey City, N. J.

Endorsed on cover: Case No. 14,997. New Jersey supreme court. Term No., 378. The Jersey City and Bergen Railroad Company, plaintiff in error, *vs.* James E. Morgan. Filed March 19th, 1892.

Office Supreme Court, U. S.
FILED.
NOV 27 1895
JAMES H. MCKENNEY,
CLERK.

SUPREME COURT

OF THE

UNITED STATES.

THE JERSEY CITY AND BERGEN RAILROAD COMPANY,
Pltff. in Error.

vs.

JAMES E. MORGAN,
Def't. in Error.

In Error to the Supreme Court of the State of New Jersey.
No. 97,
Oct. Term, 1895.

Brief of

A. Q. GARRETSON,

Of Counsel with Plaintiff in Error.

J. H. PILSON, Printer, 93 Montgomery Street, Jersey City, N. J.

Supreme Court of the United States.

THE JERSEY CITY AND BERGEN RAILROAD COMPANY, *Pltff. in Error.* vs. JAMES E. MORGAN, *Def't. in Error.*	In Error to the Supreme Court of the State of New Jersey. No. 97. October Term, 1895.

BRIEF FOR PLAINTIFF IN ERROR.

STATEMENT.

The action was for damages to the plaintiff below, by reason of being ejected from a street car of the defendant below, by the conductor of the car, and verdict for the plaintiff.

The plaintiff, with his wife, was riding in the car of the defendant, and in payment of their fares, tendered to the conductor of the car a smooth American coin, which the plaintiff claims was a genuine and legal ten cent piece, but which the conductor alleges was not good. The plaintiff on the trial produced the coin, the assistant cashier of the First National Bank of Jersey City testified that the coin was genuine, but

not negotiable; that it was mutilated; that it would not pass current, and would not be received at the bank; that by mutilated, he meant "defaced, worn; there is nothing to indicate it is a genuine piece;" that there is a discount of about fifteen per cent. on it; that a coin defaced in any way, rubbed smooth or any indention on it, is mutilated coin.

The conductor having refused to accept this coin, the plaintiff paid the fare of his wife and permitted himself to be removed from the car, which was done without excessive force.

The jury found a verdict for the plaintiff of $300, on which judgment was entered.

The defendant thereupon took the case by writ of error to the New Jersey Supreme Court, which affirmed the judgment of the Hudson County Circuit Court.

The defendant thereupon obtained a writ of error out of the Court of Errors and Appeals of the State of New Jersey, on which writ said Court affirmed the judgment of the Supreme Court, and this writ is taken to review the judgment of the Court of Errors and Appeals of New Jersey.

The writ of error is directed to the Supreme Court, (the record having been in the meantime remitted to that Court from the Court of Errors and Appeals.)

ERROR ASSIGNED.

The assignment of error brings up the question whether the coin in question was under the law, legal tender.

The question is raised: (1) By the exception to the refusal of the trial judge to direct a verdict (p. 38) and assignment of error thereon (p. 61), and (2) by exception to the judge's charge (p. 39).

"He tendered this ten-cent piece—a genuine and recognizable coin of the United States—and that was his lawful fare, provided you believe that the coin is in the condition in which it was when issued from the mint, except as it has been changed by proper use. If there has been no other abrasion, no other wearing away, no other defacement of that coin except such as it has received in passing from hand to hand, then it is still, under the laws of the country, a good ten-cent piece, and was the fare of the plaintiff. If you think it has been otherwise changed, wilfully changed, by being rubbed or in any other way, why then it has ceased to be a lawful coin of the country; it has ceased to be lawful tender. This distinction rests upon the idea that—Government issues this coin for circulation, and if the Government does not choose to put any limit upon the circulation it shall receive, it continues to be legal tender just as long as it is circulating and receiving only such injury as circulation gives.

Every piece of money that passes through our hands, is to some extent abraded thereby, and the Government knows and expects that its coins will be abraded—will be worn—and will be in that way defaced, and the Government does not withdraw coin that is only defaced in that way; it is still a legal tender; but if anybody chooses to resort to any other means of defacement, then the Government does not any longer sanction that coin; but so long as it is only defaced by lawful use, this coin remains good, current coin and lawful tender for all debts. Now, if you believe that is the character of this ten-cent piece, then this plaintiff did lawfully tender his fare," and assignment thereon. (p. 61.)

ARGUMENT.

The plaintiff in error claims that the coin in question was not legal tender.

On a question of this kind, the opinions of men whose business is the handling and receiving of moneys should be taken as experts to determine the character of the money.

J. B. Omberson, bank cashier, from his position a judge of coin, says, (p. 23.)

"It is a genuine coin, but not negotiable."

Q. "What do you mean by that?"

A. "Mutilated."

Q. "Will it pass current?"

A. "No, sir."

Q. "Would it be received at the bank."

A. "No, sir."

Johnson, time inspector, (p. 31) says:—

"The coin was handed to me, and I was asked whether it was a good coin. I turned it over and looked at it, and said I wouldn't take it."

Cassidy—another conductor says:—(p. 35.)

Q. "What kind of a ten-cent piece was it?"

A. "It was a ten-cent piece I wouldn't take."

And plaintiff intentionally passed this coin knowing it not to be legal tender. He had other money that was good, but he searched for this coin in particular. (p. 26, 27.)

In the case of United States v. Lissner, 12 Fed. Rep. 840, the Court uses this language: "We think it clear that a silver coin duly issued from the mint remains of full value so long as it retains all the appearance of a coin, and does besides contain all its original weight and fineness." "Passing such a coin works no injury to the person to whom it is passed." In this case the

coin "was not negotiable," was "mutilated," would not pass current, and would not be received at the bank. The plaintiff in error in this case would have suffered an injury if compelled to receive this coin, because the bank would not receive it.

The case referred to also holds that even in the absence of a statute, "If such a coin (silver) has had an appreciable amount of silver removed from it, we cannot say that it remains a good coin for its original value, or even for a proportionate value. If then the coin in question was so worn by use as to be "not negotiable" to be denominated "mutilated," would not pass current, and would not be received at the bank, it must have had an appreciable amount of silver removed from it, and could not be regarded as a good coin for any value.

A. Q. GARRETSON,
Of Counsel.

FILED
DEC 2 1895
JOSEPH H. McKENNEY

SUPREME COURT

OF THE

UNITED STATES.

THE JERSEY CITY AND BERGEN RAILROAD COMPANY,

Pltff. in Error.

vs.

JAMES E. MORGAN,

Def't. in Error.

In Error to the Supreme Court of the State of New Jersey.

No. 97,

Oct. Term, 1895.

Brief of

THOMAS J. KENNEDY,

Of Counsel with Defendant in Error

J. H. PILSON, Printer, 93 Montgomery Street, Jersey City, N. J.

Supreme Court of the United States.

THE JERSEY CITY AND BERGEN RAIL ROAD COMPANY, *Plaintiff in Error.*	*In Error to the Supreme Court of the State of New Jersey.*
vs.	*No. 97.*
JAMES E. MORGAN, *Defendant in Error.*	*Oct. Term, 1895*

Brief for Defendant in Error.

I.

The writ of error should be dismissed, because the record does not show that, to use the words of the writ, "The said suit was a suit wherein was drawn in question the validity of a treaty or statute of or an authority exercised under the United States, and the decision was against their validity, or wherein was drawn in question the validity of a statute of or an authority exercised under said State, on the ground of their being repugnant to the Constitution, Treaties or Laws of the United States, and the decision was in favor of such, their validity, or wherein was drawn in question the construction of a clause of Constitution

or of a treaty or statute of, or commission held under the United States, and the decision was against the title, right, privilege or exemption specially set up or claimed under such clause of the said Constitution, Treaty, Statute or Commission."

Therefore this Court will not entertain jurisdiction.

Drugger v. Bocock, 104 U. S. 596.
The Victory, 6 Wall. 382.
Hamilton Co. v. Massachusetts, 6 Wall 633.
Crowell v. Randall, 10 Pet. 368.
Chouteau v. Gibson, 111 U. S. 200.
Simmerman v. Nebraska, 116 U. S. 54.

II.

Should the Court entertain jurisdiction, then I insist that the judgment of the New Jersey Courts should be affirmed.

The coin in question was a genuine, recognizable United States coin, a ten-cent piece, somewhat worn by passing from hand to hand. It was not mutilated.

Silver coins of the United States are a legal tender to the amount of ten dollars.

Rev. St., Sec. 3586.
D. D. Sup., Sec. 488.

Gold coins are a legal tender for all payments.

Rev. St., Sec. 3585.

But gold coins when reduced in weight below a certain limit are a legal tender at a valuation in proportion to their actual weight only.

There is no such provision in regard to silver coins. It therefore appears that Congress intended that so long as a silver coin is recognizable and not mutilated it shall be a legal tender for its face value.

There is no question that the coin in question was a genuine, recognizable ten cent piece, and that it was in the same condition as when it came from the mint, except that it was somewhat worn in passing from hand to hand.

The question whether the coin was of this character was expressly submitted to the jury by the trial judge in that part of his charge on which error is assigned, and which is quoted in the brief of counsel for the plaintiff in error.

Mr. Omberson, a witness for the Company, and the only witness who used the word "mutilated" in connection with this coin evidently used it under a misapprehension of its meaning. In response to the question "What do you mean by mutilated?" he says (p. 25) "Defaced, worn."

And, quoting from the same page "Q. A person used to handling coin would know it was a genuine coin?" "A. Yes, sir."

This witness's statements that the coin in question "would not be received at the bank" where he is employed, and that "there is a discount of fifteen per cent. on it," merely shows that there is such a rule, probably illegal, at that bank.

His statement that it is not negotiable and will not pass current can hardly be relied upon to conclude this court in passing on the question.

A genuine, recognizable silver coin is a legal tender for its face value even though worn by use.

United States v. Lissner 12 Fed. Rep. 840.

That part of the opinion of the Court in the last cited case which is quoted by counsel for plaintiff in error, refers to a coin from which some of the silver had been forcibly removed, a *mutilated* coin, and has no bearing on the case at bar.

Even if the rule laid down by the trial judge is too broad, the judgment should not be reversed if the facts in this case bring it within the correct rule.

THOMAS J. KENNEDY,

Of Counsel.